LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

301 State House
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FISCAL IMPACT STATEMENT

LS 7262
BILL NUMBER: HB 1339

NOTE PREPARED: Jan 19, 2004
BILL AMENDED:

SUBJECT: Electric Utility Programs for Local Governments.

FIRST AUTHOR: Rep. Pelath
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ___**GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill allows counties and municipalities, including municipalities owning electric utilities, to form joint agencies to jointly own and operate projects to provide retail electric service to ratepayers in the participating units. The bill allows a member municipality that owns an electric utility to contribute all or part of the facilities or assets of its utility to the joint agency under certain conditions. The bill provides for the representation of each member unit on a board of directors of the joint agency. The bill provides that ratepayers in the member units directly elect representatives on the board. It allows a member unit that does not: (1) contribute its electric utility assets to the joint agency; or (2) possess an undivided interest in a project of the joint agency; to enter into a contract with the joint agency to purchase power from the joint agency. It allows a joint agency to acquire an electric utility to provide retail service to ratepayers in member units already served by a public utility. The bill provides that a joint agency has the power of eminent domain in acquiring a project, including the power to condemn an existing electric facility. The bill establishes procedures for: (1) the compensation of a public utility for any of its utility property acquired by a joint agency; and (2) the establishment of a service area for the electric utility of the joint agency. It provides that a certificate of public convenience and necessity is not required for a joint agency's project to provide retail electric service, if the Indiana Utility Regulatory Commission approves: (1) the project; (2) a service area for the project; and (3) any bonds issued in connection with the project. It allows the following to own and operate joint projects: (1) Joint agencies. (2) Eligible units. (3) Public utilities. The bill allows joint agencies and eligible units to issue bonds to finance a project or joint project. It also allows a joint agency to sell excess capacity or output from a project or joint project if the joint agency uses the proceeds of the sale to: (1) promote energy conservation; (2) provide sustainable energy products or services; or (3) reduce rates and charges for ratepayers.

Effective Date: Upon passage; July 1, 2004.

Explanation of State Expenditures: *Indiana Utility Regulatory Commission:* Depending on the number the number of joint agencies formed to jointly own and operate projects to provide retail electric service to ratepayers, this bill could have a significant impact on the Commission.

The Commission would have several oversight functions in the creation, funding, and rate setting of a newly created joint agency. Joint agencies are required to seek the Commission's approval prior to establishing the agency's service area, issuing bonds, and acquiring or constructing a project. Additionally, retail electric rates set by a joint agency would require the Commission's approval.

If the Commission is required to conduct additional research and hold more hearings, the additional funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. As of January 12, 2004, the IURC had two vacant positions. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

The Office of the Utility Consumer Counselor (OUCC) would participate in ratemaking hearings.

Background on IURC and OUCC Funding: The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2003, fees from the utilities and fines generated approximately $10.9M.

Explanation of State Revenues: *Secondary Impacts:* The establishment of the joint agencies to provide retail electric service could have several impacts on state revenues.

Potential Sources of Increases in State Revenue: If the creation of joint agencies generate new investment in electric generation and distribution projects, state revenues could increase. Likewise, if more jobs are created, revenue from the state's Income and Sales Tax would also increase.

Potential Sources of Decreases in State Revenue: The state generally imposes a Sales Tax on the sale of electricity. If the joint agencies are able to sell electric power at costs lower than firms currently providing electric service, state Sales Tax revenue would decrease. Additionally, if the bill's provisions reduce a taxpaying utility's service area, revenue from the state's Adjusted Gross Income Tax could be negatively impacted.

Revenues from the Adjusted Gross Income Tax and Utility Receipts Tax are deposited in the state General Fund. Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Loan Fund (0.033%).

Electric utility sales by joint agencies would be subject to the state's Utility Receipts Tax. Revenue from the Tax is deposited in the state General Fund.

State Fair and State Forestry Property Tax Levy: The state levies a small tax rate for State Fair and State Forestry. Joint agencies would be required to make a payments in lieu of taxes equal on property owned in an amount equal to the what would have been assessed had the joint agency been subject to the state's property tax.

Explanation of Local Expenditures: *Joint Agencies:* This bill gives the governing bodies of counties and municipalities the authority to enter into agreements to form or enter a joint agencies to own and operate projects to provide retail electric service to ratepayers. A joint agency created by counties and municipalities would be a separate body corporate and politic.

The operating and capital costs associated with a joint agency would be paid through the retail sale of electricity and through the issuance of bonds. The costs associated with the proposal are indeterminable and will depend on the service area of the joint agency and the costs associated with acquiring or constructing facilities to produce electric power.

A joint agency would be governed by a board of directors. The board's authority includes the authority to: adopt by-laws, buy and sell real and personal property, assign revenues, issue bonds, enter into agreements with other joint agencies, eligible units, or public utilities, and to enter into contracts to generate, produce, and deliver electric power to retail customers.

The board of directors of a newly created joint agency will consist of appointees made by the governing bodies of the member units. The initial board is charged with developing a procedure for the election of subsequent board members by the ratepayers served by the joint agency.

Explanation of Local Revenues: This bill specifies that joint agencies and eligible units may issue bonds to raise funds for utility projects. Additionally, a joint agency and eligible units may set, upon approval from the IURC, the rates necessary to pay the costs associated with proving retail electric service. Any revenue in excess of that required for the operation of the joint agency may be used to fund sustainable energy projects, to promote energy efficiency, and to reduce ratepayers' charges.

Facilities acquired or constructed by joint agencies or eligible units are not required to pay local property taxes. However, the bill requires that the joint agency or unit make payments in lieu of taxes equal to the amount the agency would have paid if the entity were subject to local property taxes.

State Agencies Affected: Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor.

Local Agencies Affected: Counties and municipalities.

Information Sources:

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